IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No.581-SB of 2004
Date of Decision : 03.03.2010

Bhan Singh son of Sadhu Singh son of Lokha, caste Ramdasia, r/o Mauran, Police Station Sunam.

...Appellant

Versus

State of Punjab.

....Respondent

CORAM: HON'BLE MR. JUSTICE SHAM SUNDER

Present: Mr. N.K. Manchanda, Advocate,
for the appellant.

Mr. T.S. Salana, Deputy Advocate General, Punjab,
for the respondent – State.

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SHAM SUNDER, J.

This appeal, is directed, against the judgment of conviction, and the order of sentence, dated 19.12.03, rendered by the Judge, Special Court, Sangrur, vide which, he convicted the accused, for the offence punishable under Section 15 of the Narcotic Drugs and Physchotropic Substances Act, 1985 (hereinafter to be called as the 'Act' only), and sentenced him to undergo rigorous imprisonment for a period of 10 years, and to pay a fine of Rs. 1 lac, and, in default of payment thereof, to further undergo rigorous imprisonment for a period of two years, for having been found in possession of 175 kgs poppy

husk, without any permit or licence, falling within the ambit of commercial quantity.

2. The facts, in brief, are that, on 14.08.2000, Swaran Singh, Inspector/Station House Officer, alongwith some other Police officials, was on patrol duty, and going from village Campher to Khetla, on katcha rasta, in a vehicle, bearing registration No. PB-13B-1594, being driven by Amrik Singh, PHG. When the Police party, reached near the bridge of drain, in the vicinity of village Campher, on the right side of the bank of drain under the bushes, two persons, were seen, sitting on five gunny bags, containing some articles. On seeing the Police party, they tried to run away, but Bhan Singh, one of the accused, was overpowered on suspicion. The other accused namely Gurjant Singh, was given a hot chase by the Police party, but he succeeded in running away. In the meantime, Uggar Singh son of Kashmir Singh Jat, resident of Dirba, reached at the spot, from the side of village Khetla, who was joined in the Police party. On search of the bags, in the presence of Rajbachan Singh, Deputy Superintendent of Police, who was called at the spot, 175 kgs poppy husk was recovered. Two samples of 250 gms, from each bags, were separated, and the remaining poppy husk, was kept, in the same bags. The samples and the bags, containing the remaining poppy husk, were converted into parcels, duly sealed, and taken into possession, vide a separate recovery memo. From the personal search of Bhan Singh, accused, Rs. 1,000/-, were recovered, which were also taken into possession. Ruqa was sent to the Police

Station, on the basis whereof, the first information report, was registered. Rough site plan of the place of recovery was prepared. Bhan Singh, accused, was arrested. After the completion of investigation, he was challaned. Proceedings for arresting Gurjant Singh, accused, were separately initiated.

3. On his appearance, in the Court, the accused, was supplied the copies of documents, relied upon by the prosecution.

4. Charge under Section 15 of the Act, was framed against the accused, which was read-over and explained to him, to which, he pleaded not guilty, and claimed judicial trial.

5. The prosecution, in support of its case, examined Bikaramjit Singh, Head Constable (PW1), Jasbir Singh, Constable (PW2), Swaran Singh, Inspector/Station House Officer (PW3), the Investigating Officer, Darshan Kumar, Assistant Sub Inspector (PW4), and, Rajbachan Singh, Deputy Superintendent of Police (PW5), a witness to the recovery. The Additional Public Prosecutor, for the State, gave up Uggar Singh, being won over by the accused. Thereafter, the prosecution evidence was closed.

6. The statement of the accused, under Section 313 of the Code of Criminal Procedure, was recorded. He was put all the incriminating circumstances, appearing against him, in the prosecution evidence. He pleaded false implication. It was stated by him that no incriminating article, was recovered from his possession. It was further stated by him that he had a dispute with the Police, as a result whereof,

he was falsely implicated, in the instant case. He, however, did not lead any evidence in defence and closed the same.

7. After hearing the Counsel for the parties, and, on going through the evidence, on record, the trial Court, convicted and sentenced the accused, as stated above.

8. Feeling aggrieved, the instant appeal, was filed by the appellant.

9. I have heard the Counsel for the parties, and, have gone the evidence and record of the case, carefully.

10. The Counsel for the appellant, at the very outset, submitted that, no doubt, Uggar Singh, independent witness, was joined, but, he was not examined, and given up, as won over by the accused. He further submitted that, as such, an adverse inference, could be drawn, that had he been examined, he would not have supported the case of the prosecution. The submission of the Counsel for the appellant, in this regard, does not appear to be correct. There is, no dispute, about the factum, that Uggar Singh, independent witness, was joined, but, he was given up, as won over by the accused, on the request of the Police, by the Additional Public Prosecutor, for the State, vide statement dated 02.08.03. It means that, this witness, was given up, by the Additional Public Prosecutor, for the State, after being satisfied, that he had actually been won over. The Additional Public Prosecutor, for the State, is the master of the case. It is for him, to decide, as to which witness, he wants to examine, and which witness, he does not want to

examine. Since Uggar Singh, independent witness, had been won over by the accused, there was no necessity of examining him, as the Additional Public Prosecutor, for the State, very well knew that, if he examined Uggar Singh, independent witness, he would cause damage, to the case of the prosecution. The discretion, exercised by the Additional Public Prosecutor, for the State, in giving up Uggar Singh, could not be said to be arbitrary or capricious. On the other hand, the decision, taken by the Additional Public Prosecutor, for the State, could be said to be bonafide. In ***Masalti Vs. State of Uttar Pradesh, AIR 1965 (S.C.) 202***, it was held that it is, undoubtedly, the duty of the prosecution to lay before the Court, all material witnesses, available to it, whose evidence is necessary for unfolding its case, but it would be unsound to lay down it, as a general rule, that every witness, must be examined, even though his evidence, may not be very material, or even if, it is known that he/she has been won over or terrorized. In ***Roop Singh Vs. State of Punjab 1996 (1) RCR 146***, a Division Bench of this Court, held that no adverse inference could be drawn, when the only independent witness, was given up by the prosecution, as won over by the accused. It was further held, in the said authority, that the panch witnesses, being human beings, are quite exposed and vulnerable to human feelings of yielding, browbeating, threats and inducements, and giving up of the public witnesses, as won over, is fully justified, in the present day situation, prevailing in the society. In ***Karnail Singh Vs. State of Punjab 1983 Criminal Law Journal, 1218 (DB),*** it was held

that where the independent witness, was won over by the accused, and only the officials were examined, as witnesses for the prosecution, who were considered to be not interested persons, their evidence cannot be doubted, on the ground of their official status. Similarly in ***Appa Bai and another Vs. State of Gujrat 1988 S.C. 696***, it was held that the prosecution story cannot be thrown out, on the ground, that an independent witness had not been examined by it. It was further held that civilized people, are generally insensitive, when a crime is committed, even in their presence, and they withdraw from the victim's side, and from the side of the vigilant. They keep themselves away from the Courts, unless it is inevitable. Moreover, they think the crime like a civil dispute, between two individuals, and do not involve themselves in it. The principle of law, laid down, in the said cases, is fully applicable to the facts of the present case. Even otherwise, the other evidence produced by the prosecution is reliable. In this view of the matter, the submission of the Counsel for the appellant, being without merit, must fail, and the same stands rejected.

11. It was next submitted by the Counsel for the appellant, that there was delay of 15 days, in sending the sample parcels, to the office of the Chemical Examiner, which remained unexplained, and, as such, the possibility of tampering with the same, could not be ruled out, especially when the sample seal throughout remained with the Police officials. The submission of the Counsel for the appellant, in this regard, does not appear to be correct. The mere fact that delay, in

sending the samples, to the office of the Chemical Examiner, was not explained, in itself, was not sufficient, to come to the conclusion, that the sample parcels were tampered with, at any stage. In such circumstances, the Court is required to fall back upon the other evidence, produced by the prosecution, to complete the link evidence. The other evidence, produced by the prosecution, has been subjected to indepth scrutiny, and, as stated above, it has been found to be cogent, convincing, reliable, and trustworthy. From the other evidence, produced by the prosecution, it was proved that none tampered with the sample parcels, until the same reached the office of the Chemical Examiner. Above all, there is report of the Chemical Examiner, Ex. PX, which clearly proves that the seals on the samples, were intact, on their arrival, in the Laboratory, and tallied with the sample seals sent. The report of the Chemical Examiner is per-se admissible into evidence, in its entirety, as per the provisions of Section 293. The delay in sending the samples, to the office of the Chemical Examiner, therefore, did not prove fatal to the case of the prosecution. Had no other evidence, been produced, by the prosecution, to prove that the sample parcels, remained untampered with, until the same reached the office of the Chemical Examiner, the matter would have been different. In ***Narinder Singh @ Nindi Vs. State of Punjab 2005(3) RCR (Criminal) 343***, which was a case, relating to the recovery of 4 Kgs. of opium, the samples were sent to the office of the Chemical Examiner, after 23 days. All the samples were intact. In ***State of Orissa Vs.***

Kanduri Sahoo, 2004(1), RCR (Criminal), 196 (S.C.), it was held that mere delay in sending the sample to the Laboratory is not fatal, where there is evidence that the seized articles remained in safe custody. It was held, in the aforesaid cases, that in the face of the other cogent, convincing, reliable, and trustworthy evidence produced by the prosecution, to prove the completion of link evidence, it could not be held that the possibility of tampering with the samples, could not be ruled out. The principle of law, laid down, in the aforesaid cases, is fully applicable to the facts of the instant case. Therefore, in the instant case, unexplained delay of 15 days, in sending the samples to the office of the Chemical Examiner, did not at all matter much. In this view of the matter, the submission of the Counsel for the appellant, being without merit, must fail, and the same stands rejected.

12. No other point, was urged, by the Counsel for the parties.

13. In view of the above discussion, it is held that the judgement of conviction and the order of sentence, rendered by the trial Court, are based on the correct reading and due appreciation of evidence, and, law on the point. The same do not suffer from any illegality and infirmity, warranting the interference of this Court, and, are liable to be upheld.

14. For the reasons recorded above, the appeal, is dismissed. The judgement of conviction and the order of sentence are upheld. If the appellant, is on bail, his bail bonds shall stand cancelled.

15. The concerned Chief Judicial Magistrate, is directed to

comply with the judgement, in accordance with law, keeping in view the applicability of the provisions of Section 428 of the Code of Criminal Procedure, and send the compliance report, within a period of two months, from the date of receipt of a copy thereof.

16. The District & Sessions Judge, is also directed to ensure that the directions, referred to above, are complied with, and the compliance report is sent within the time frame, to this Court.

17. The Registry is directed to keep track that the directions are complied with, within the stipulated time. The papers be put up within 10 days, of the expiry of the time frame, whether the report is received or not, for further action.

03.03.2010 **(SHAM SUNDER)**
Amodh **JUDGE**